

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
OCT 26 3 55 PM '92

DISPATCHED BY
MM Docket No. 92-241

In the Matter of

Amendment of Section 73.202(b) RM-8084
Table of Allotments,
FM Broadcast Stations.
(Camas, Washington and
Seaside, Oregon)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: September 28, 1992; Released: October 26, 1992

Comment Date: December 18, 1992

Reply Comment Date: January 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Pacific Northwest Broadcasting Corporation, permittee of Station KMUZ-FM ("petitioner"), proposing the substitution of Channel 234C2 for Channel 234C3 at Camas, Washington, and the modification of Station KMUZ-FM's construction permit to specify operation on the higher powered channel.¹ In order to accommodate the upgrade, petitioner also requests the substitution of Channel 235A for Channel 234A at Seaside, Oregon, and the modification of Station KQEM(FM)'s construction permit accordingly.² Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 234C2 for Channel 234C3 at Camas, Washington, since it would enable Station KMUZ-FM to expand its coverage area. A staff engineering analysis reveals that Channel 234C2 can be substituted for Channel 234C3 in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site with a site restriction of 28.7 kilometers (17.8 miles) east of the community.³ Additionally, Channel 235A can be substituted for Channel 234A at Seaside, Oregon, at the authorized site of Station KQEM(FM) with a site restriction of 2.1 kilometers (1.3 miles) south.⁴

3. Since the petitioner's modification request at Camas is consistent with the provisions of Section 1.420(g) of the Commission Rules, we shall propose to modify the construction permit of Station KMUZ-FM without entertaining competing expressions of interest in the use of Channel 234C2 at Camas or require the petitioner to demonstrate the availability of an additional equivalent class channel. Canadian concurrence has been requested, since Camas and Seaside are located within 320 kilometers (200 miles) of the U.S.-Canadian border. In addition, we shall direct an *Order to Show Cause*, to the permittee of Station KQEM(FM) at Seaside, Washington, as to why its construction permit should not be modified to specify operation on Channel 235A in lieu of Channel 234A.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. In this instance, petitioner has stated its willingness to reimburse Station KQEM(FM) for reasonable costs incurred in changing its frequency.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Camas, Washington	234C3	234C2
Seaside, Oregon	234A	235A

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Kenneth S. Eiler, permittee of Station KQEM(FM), Seaside, Oregon, SHALL SHOW CAUSE why its construction permit SHOULD NOT BE MODIFIED to specify operation on Channel 235A in lieu of Channel 234A.

7. Pursuant to Section 1.87 of the Commission's Rules, Kenneth S. Eiler may, not later than **December 18, 1992**, file a written statement showing with particularity why its construction permit should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Kenneth S. Eiler to furnish additional information. If the Kenneth S. Eiler raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the Kenneth S. Eiler will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

¹ Petitioner has an application (BMPH-9208311H) pending before the Commission to modify Station KMUZ-FM's construction permit.

² Petitioner advises that the construction permit (BPH-880310MN) for Station KQEM(FM) has been assigned to the Monte Corporation and the call letters changed to KBRD(FM). Although the assignment of Station KQEM(FM)'s construction permit was granted on January 15, 1992, it has not been con-

summed. Accordingly, we will serve both the permittee and assignee with a copy of this *Notice of Proposed Rule Making and Order to Show Cause*.

³ The coordinates for Channel 234C2 at Camas are North Latitude 45-32-20 and West Longitude 122-02-24.

⁴ The coordinates for Channel 235A at Seaside are North Latitude 45-58-55 and West Longitude 123-55-02.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Kenneth S. Eiler
P.O. Box 53
Seaside, Oregon 97138
(Permittee of
Station KOEM(FM))

Lee W. Shubert, Esq.
Haley, Bader and Potts
Suite 600
2000 M Street, N.W.
Washington, D.C. 20036
(Counsel for Monte
Corporation)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **December 18, 1992**, and reply comments on or before **January 4, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Louise Cybulski
Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel for Petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served

on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.